

- 4
- (c) a conduit in fluid communication with said outlet port, said conduit extending to said bottom of said canister body when said lid is placed in covering relation to said canister body;
 - (d) a vacuum port in said lid for application of vacuum to said canister for inducing said inflow of fluids into said canister; and
 - (e) a check valve on said lid operatively coupled to said vacuum port for stopping said application of vacuum to said canister when said fluids in said canister reach a pre-determined level.

REMARKS

Applicant respectfully acknowledges receipt of the Office Action mailed November 15, 2002. In the Office Action, the Examiner: (1) rejected claims 1 - 13, 22, 23, 28, 31, 33 and 36 under the doctrine of obviousness-type double patenting; (2) rejected claims 31 and 36 as anticipated under 35 U.S.C. § 102; and rejected claims 1, 2, 3, 4, 23 and 33 as obvious under 35 U.S.C. § 103; and (3) objected to the drawings filed on July 3, 2000. In response, Applicant has submitted a Terminal Disclaimer in respect of the double patenting objection, cancelled claims 31 and 36, made submissions in respect of the obviousness objections and has submitted formal drawings. Claim 33, which depends from claim 31, has been rewritten in independent form with the limitations of claim 31. For the reasons that follow, Applicant requests reconsideration and allowance of all pending claims. A marked-up copy of the changes made to the claims by the present amendment is attached, captioned "Version with Markings to Show Changes Made."

I. Double Patenting

The Examiner has rejected claims 1 to 13, 22, 23, 28, 31, 33 and 36 on the basis of obviousness-type double patenting as being unpatentable over claims 1 - 15 of Applicant's U.S. Patent No. 5,741,237. As noted by the Examiner, a Terminal Disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome such rejection. Both the present application and patent No. 5,741,237 are commonly owned by the Applicant. We enclose a Terminal Disclaimer (form PTO/SB 26) herewith and request that the double patenting rejection be withdrawn in view of it.

II. Claim Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 31 and 36 under 35 U.S.C. § 102(e) as being anticipated by Schneider, U.S. Patent No. 5,713,879. Applicant has cancelled claims 31 and 36.

III. Claim Rejections Under 35 U.S.C. § 103

The Examiner has cited Schneider as the principal reference against claims 1, 2, 3, 4, 23 and 33. Schneider is a reference that was previously cited by the Examiner in the prosecution of this application, specifically in the Office Action dated June 6, 2001, Notice of References Cited. At that time, the Examiner allowed the very claims he is now rejecting under 35 U.S.C. § 103 over the Schneider reference. It is submitted that it is highly prejudicial to Applicant's prosecution of its application for the Examiner to cite the reference again at this stage of the prosecution. Applicant recognizes that a claim noted as allowed can, in principle, be subsequently rejected. However, great care should be exercised by the Examiner in authorizing such a rejection. See MOPOP 706.04. Importantly, the Examiner is not citing a newly-discovered reference to reject previously-allowed claims, but is rejecting them *on the basis of the very same reference that was previously cited by the Examiner and over which the Examiner allowed the claims*. Applicant contends that the Schneider reference should not now be re-applied by the Examiner at this stage of the prosecution, and requests the Examiner to withdraw the citation in its entirety.

Further, Applicant submits that the claims now rejected by the Examiner as obvious under 35 U.S.C. § 103 are clearly patentable over the cited references.

The Examiner has rejected claims 1, 4 and 23 as unpatentable over Schneider in view of Nichols, U.S. Patent No. 4,347,946, on the basis that it would have been obvious to combine the outlet port closure (30) of Nichols with the blood collecting device of Schneider in order to prevent contaminants from entering the receptacle. Applicant respectfully traverses this rejection.

Schneider discloses a device having a significantly different structure and mode of operation from the device of Applicant. In Schneider, the fluid outlet port (the unnumbered port to which outlet tube 7 is attached) is connected to a blood treatment device 30. Blood in pouch 5 within the canister is removed from the pouch through hose 8, the outlet port and hose 7, to blood treatment device 30. It would accordingly be impossible to put a closure on the outlet port of Schneider, as tubes 7 and 8 (which is apparently a single continuous

tube - see Figs. 1 and 2) extends through the outlet port. Nor would there be any motivation whatever to put a closure on the outlet port of Schneider. In contrast, in Applicant's canister, the outlet port closure is applied when fluid is being drawn into the canister. This is clearly not the case with Schneider. Further, as noted by the Examiner, the outlet port closure of Nichols is to prevent contaminants from entering the receptacle. The purpose of the closure in Applicant's device is to maintain a vacuum in the canister when fluid is being drawn into the canister. There is no basis to combine the disclosures of Schneider and Nichols in the manner suggested by the Examiner.

The Examiner rejected claims 2 and 33 as unpatentable over Schneider and Nichols in view of Rishton (U.S. Patent No. 5,634,897) on the basis that it would have been obvious to combine the check valve (34) of Rishton with the blood collecting device of Schneider and Nichols in order to maintain the vacuum within the canister after the vacuum line has been removed. Applicant respectfully traverses this rejection.

In Schneider, suction pipe 18, connected to hose 3, is connected to a bore 6 that extends within or below cover 2, opening into pouch 5, and is also connected to an outlet opening 4 that extends through cover 2 into the space between container 1 and pouch 5. This dual connection is to equalize the pressure between the pouch 5 and the space between the pouch and the container 1. See column 3, lines 11 - 19 and Fig. 3. It would accordingly be impossible, and purposeless in any event, to put on the lid of Schneider a check valve operably coupled to the vacuum port for stopping the application of vacuum to the container when fluids in the container reach a pre-determined level, as required by Applicant's claims 2 and 33. This is because in Schneider there are two separate openings from the suction tube into the canister, one of which leads into the pouch where blood is collected, and the other into the container outside the bag, where blood is not collected. It would not be possible to have a check valve as required by Applicant's claims 2 and 33 in such structure and there would be no motivation to include it: it is apparent that in Schneider, the vacuum is stopped by other means: see the clip shown on hose 3 in Figure 1 (near reference number 25) which is apparently for controlling or stopping the vacuum in hose 3.

The Examiner rejected claim 3 as being unpatentable over Schneider and Nichols in view of Hesselman (U.S. 3,382,886), on the basis that it would have been obvious to include the inward extension of the inlet conduit of Hesselman with the blood collecting device of Schneider and Nichols in order to minimize turbulent fluid flow in the canister. Applicant respectfully traverses this objection.


In Schneider, blood flows into a filter screen 12 which is much smaller than the pouch 5 and container 1. There is no apparent reason to be concerned about turbulent flow into the filter screen and in fact it would likely be undesirable to have blood directed by means of an inward extension of an inlet conduit to a particular area of the filter screen, as that would likely reduce filtering efficiency. In fact, it would be preferable to have blood flow into the filter screen from the opening in the lid without being directed to any specific part of the screen, as is in fact shown in Schneider. There is accordingly no motivation to include an inlet conduit extending into the blood collecting device of Schneider. That is a combination of components that would serve no useful purpose given the blood filtering structure of Schneider.

Conclusions

Applicant respectfully requests reconsideration and allowance of all pending claims.

Respectfully submitted,

By:



David J. McGruder
Registration No. 32,375

Vancouver, B.C.
CANADA

Tel. No.: (604) 669-3432 extn. 222
Fax No.: (604) 681-4081
email: dmcgruder@patentable.com

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

33. (Once Amended) A lid for covering a canister body, said lid and canister body together forming a canister for receiving fluids, said canister body having side walls and a bottom, said lid comprising:

- (b) an inlet port in said lid for inflow of fluids into said canister;
- (b) an outlet port in said lid for outflow of fluids from said canister;
- (c) a conduit in fluid communication with said outlet port, said conduit extending to said bottom of said canister body when said lid is placed in covering relation to said canister body; [and]
- (d) a vacuum port in said lid for application of vacuum to said canister for inducing said inflow of fluids into said canister; and [A lid according to claim 31 further comprising]
- (e) a check valve on said lid operatively coupled to said vacuum port for stopping said application of vacuum to said canister when said fluids in said canister reach a pre-determined level.